



**Okoiti v Principal Secretary State Department of Blue Economy & Fisheries & 4 others; Ceer Processing Limited (Interested Party) (Petition E050 of 2024) [2025] KEHC 7343 (KLR) (23 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 7343 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
PETITION E050 OF 2024**

**J NGAAH, J**

**MAY 23, 2025**

**BETWEEN**

**OKIYA OMTATAH OKOITI ..... PETITIONER**

**AND**

**THE PRINCIPAL SECRETARY STATE DEPARTMENT OF BLUE ECONOMY & FISHERIES ..... 1<sup>ST</sup> RESPONDENT**

**THE PRINCIPAL SECRETARY STATE DEPARTMENT OF PUBLIC WORKS ..... 2<sup>ND</sup> RESPONDENT**

**THE CHIEF EXECUTIVE OFFICER KENYA FISHING INDUSTRIES CORPORATION ..... 3<sup>RD</sup> RESPONDENT**

**THE CABINET SECRETARY MINISTRY OF MINING, BLUE ECONOMY AND MARITIME AFFAIRS ..... 4<sup>TH</sup> RESPONDENT**

**THE ATTORNEY GENERAL ..... 5<sup>TH</sup> RESPONDENT**

**AND**

**CEER PROCESSING LIMITED ..... INTERESTED PARTY**

**RULING**

1. By way of a petition dated 29 August 2024, the petitioner has sought several declarations and orders against the respondents. His prayers have been couched as follows:
  - “a) A declaration that the Liwatoni Fresh and Frozen Fish Processing Plant at Liwatoni Complex was launched and test run, and cannot be the subject of fresh procurement and award of contract.



- b) A declaration that Tender No. MMBE&MA/SDBE&F/31/2023-2024 is fraudulent and, therefore, unconstitutional, null and void ab initio.
- c) A declaration that the respondents should be surcharged to recover any money spent on Tender No. MMBE&MA/SDBE&F/31/2023-2024.
- d) A declaration that the Liwatoni Fresh and Frozen Fish Processing Plant, which is part of the Liwatoni Fisheries Complex should be leased, operationalized, commercialized, and managed as advertised under Tender No. MMBE&MA/SDBE&F/13/2023-2024.
- e) An Order quashing Tender No. MMBE&MA/SDBE&F/31/2023-2024.
- f) An Order that, being a matter of public interest litigation, each party should bear their costs of the Petition.
- g) Any other or further orders, writs, and directions this court considers appropriate and just to grant for the purpose of advancing the cause of justice.”

2. The petition is supported by the petitioner’s own affidavit sworn on 29 August 2024. The petitioner has described himself in the affidavit as:

“...a Member of Parliament in the Senate...a public-spirited individual and a human rights defender...a member of Kenyans for Justice and Development Trust, which is a legal trust, incorporated in Kenya and founded on republican principles.”

3. The Trust to which reference has been made is said to have been set up for promoting democratic governance, sustainable economic development, and general prosperity for the masses.

4. Alongside the petition, the petitioner has filed a motion dated 29 August 2024 for injunction and conservatory orders. In particular, the petitioner seeks for orders:

- i. That this Application be certified urgent and be heard ex-parte in the first instance.
- ii. That pending the hearing and determination of this Application and/or the petition, this Honourable Court be pleased to issue a temporary injunction, restraining the respondents, whether by themselves, servants, agents, assigns and/or any person claiming to act under them from awarding any contracts under Tender No. MMBE&MA/SDBE&F/31/2023-2024 for the proposed completion of Liwatoni Fresh and Frozen Fish Processing Plant.
- iii. That pending the hearing and determination of this Application and/or the petition, this Honourable Court be pleased to issue a conservatory order suspending any contracts issued, awarded, and/or signed with a third party or third parties by the respondents, whether by themselves, servants’, agents, assigns and/or any person claiming to act under them pursuant to Tender No. MMBE&MA/SDBE&F/31/2023- 2024 for the proposed completion of Liwatoni Fresh and Frozen Fish Processing Plant.
- iv. That pending the hearing and determination of this Application and/or the petition, this Honourable Court be pleased to issue a temporary injunction, restraining the respondents, whether by themselves, servants’, agents, assigns



and/or any person claiming to act under them from handing over the Liwatoni Fresh And Frozen Fish Processing Plant At Liwatoni, Mombasa County, to a new firm or contractor under Tender No. MMBE&MA/SDBE&F/31/2023-2024 for the proposed completion of Liwatoni Fresh and Frozen Fish Processing Plant.

- v. That pending the hearing and determination of this Application and/or the petition, this Honourable Court be pleased to issue a temporary injunction, restraining the respondents, whether by themselves, servants, agents, assigns and/or any person claiming to act under them from handing over work done in tender no MOALF&C/SDFABE/012/2021-2022.
- vi. That pending the hearing and determination of this Application and/or the petition, this Honourable Court be pleased to issue a temporary injunction, restraining the respondents, whether by themselves, servants' agents assigns and/or any person claiming under them from removing any equipment and machinery installed at the Ultra-Modern Tuna Fish Hub at Liwatoni, Mombasa County (Phase one).
- vii. An interim order of mandamus be granted to compel the 1st Respondent to provide all information as required by Article 35 of the Constitution on access to information to the petitioner and the Court regarding Tender Nos. MMBE&MA/SDBE&F/13/2023, MMBE&MA/SDBE&F/26/2023-2024, MMBE&MA/SDBE&F/31/2023-2024 and MOALF&C/SDFABE/012/2021-2022."

The petitioner has asked that the costs of the application be in the cause.

5. The application is expressed to be filed under articles 20, 22, 50(1), 23(3), 159(2)(b) &(d), 165, and 258 of the Constitution; and, Rules 2,3(2), (3), (4), (5),8,10,13,19,23 and 24 of the Constitution of Kenya (Protection of Rights and Fundamentals Freedoms) Practice and Procedures Rules, 2013.
6. According to the affidavit sworn in support of the application, the applicant "reiterates and repeats the averments in the said affidavit and petition".
7. But in the affidavit in support of the petition, all that the deponent has sworn with respect to the facts is as follows:

"That in support of my averments above, I now annex hereto a bundle marked as "Exhibit OOO-1," containing the following documents:

- a. Photos of the Modular Fresh and Frozen Fish Processing Plant.
- b. Photos of the former H.E President Uhuru Kenyatta commissioning the Modular Fresh and Frozen Fish Processing Plant.
- c. Photos of the President H.E Dr Wiliam Ruto touring the Modular Fresh and Frozen Fish Processing Plant.
- d. The advertisements and prequalification requirements issued by the State Department of Blue Economy & Fisheries.



- e. Tender No. MMBE&MA/SDBE&F/31/2023-2024 for the completion of works that were done by the Interested Party in Tender No. MOALF&C/SDFA&BE/012/2021-2022.
  - f. Tender No. MMBE&MA/SDBE&F/13/2023-2024 titled ‘Prequalification of firms for leasing, operationalization, commercialization, and management of the Liwatoni Fisheries Complex.
  - g. Tender No. MMBE&MA/SDBE&F/26/2023-2024 titled, Proposed Completion of the Liwatoni Fresh and Frozen Fish Processing Plant.
  - h. Tender No. MMBE&MA/SDBE&F/31/2023-2024 titled, Proposed Completion of the Liwatoni Fresh and Frozen Fish Processing Plant.
  - i. A photo of Hon. Ali Hassan Joho, the Cabinet Secretary Ministry of Mining, Blue Economy & Fisheries making the pronouncements in Mombasa County on 19th August 2024 or there about that a new contractor had been awarded the contract to complete the project.”
8. Nothing else is said in the affidavit on these exhibits and one has to turn to the petition to establish the rest of the petition’s factual basis.
  9. What has been given as the factual background in the petition is that in April 2022, the interested party, Ceer Processing Limited, was contracted to develop an ultra-modern tuna fish hub at Liwatoni in Mombasa County. The scope of works is said to have involved:
    - a. Designing of the ultra-modern tuna fish hub;
    - b. Construction of a Modular Fresh and Frozen Fish Processing Plant.
    - c. Construction of a 1000MT capacity modular cold storage facility.
    - d. Construction of a 25MT per day tuna cooked loins and tuna canning plant.
  10. On or around 6 August 2022, the Modular Fresh and Frozen Fish Processing Plant was launched by the then president of Kenya, His Excellency President Uhuru Kenyatta, “complete with a test run, marking completion of that component of the project.”
  11. And perhaps in demonstration of the fact that this particular phase of the project was complete, on 13 February 2024, the 1<sup>st</sup> respondent, advertised a tender inviting bids from able and interested firms to lease, operationalize, commercialize, and manage the Liwatoni Fisheries Complex. This tender was described as under Tender No. MMBE&MA/SDBE&F/13/2023- 2024.
  12. In the advertisement, the 1<sup>st</sup> respondent described the project as one capable of providing fish storage and processing services for the increasing local and global market. Additionally, the successful candidate was to be given a long-term lease. It is the petitioner’s position that the “decision to advertise the Liwatoni Fisheries Complex for leasing, operations and management is proof that the facility was ready for operations”.
  13. That notwithstanding, in March 2024, under Tender No. MMBE&MA/SDBE&F/26/2023-2024, the 1<sup>st</sup> respondent advertised for the ‘Proposed Completion of Liwatoni Fresh and Frozen Fish Processing Plant,’ yet the facility had been launched and test-run. However, the tender was abandoned when it was challenged in Court by the interested party.



14. Even then, in what the petitioner has described as a “skewed scheme”, the 1<sup>st</sup> respondent re-advertised the same ‘Proposed Completion of Liwatoni Fresh and Frozen Fish Processing Plant under a tender described as “Tender No. MMBE&MA/SDBE&F/31/2023-2024”. I will henceforth refer to this particular tender as “the subject tender”.
15. Further, on 19 August 2024, the Cabinet Secretary Ministry of Mining, Blue Economy and Maritime Affairs made pronouncements to the effect that a new contractor had been awarded the contract to complete the Modular Fresh and Frozen Fish Processing Plant.
16. It is the petitioner’s position that the advertisement of the work completed by the interested party “is a scheme orchestrated by the respondents to swindle money from Kenyan taxpayers.”
17. The re-advertisement of what, in the petitioner’s view, is a completed project, is contrary articles 10, 47, 73, 75, 201(d) & (e), and 232 of *the Constitution*. It is also contrary to the rule of law, transparency and accountability, social justice, good governance, integrity, sustainable development, prudent and responsible use of public money, responsibilities of leadership, values and principles of public service.
18. The respondents opposed the motion and filed a replying affidavit and grounds of objection. In the grounds of objection, the respondents have pleaded that the petitioner’s case is misconceived, fatally defective and that it is res judicata. The interested party is said to have filed another case in Nairobi registered as Milimani High Court Commercial Case No. 168 of 2024 in which the orders sought are on all fours with the orders sought in this petition.
19. In that case, the court is said to have declined to grant injunctive orders against the respondents to restrain them from advertising tenders in relation to the project, awarding any tender and handing over the project to any successful bidder. As at the time of filing the grounds of objection, the case at Nairobi was set for hearing on 18 November 2024.
20. In the circumstances, this petition is billed as a forum shopping exercise and, therefore, an abuse of the process of this Honourable Court. The respondents plead that it is in the public interest that the interim injunctive orders be vacated to enable the project to be completed and avoid loss of tax payers’ money.
21. The respondents’ replying affidavit has been sworn by Betsy Muthoni Njagi who has identified herself as the Principal Secretary, for the State Department for the Blue Economy and Fisheries under the Ministry of Mining, Blue Economy, and Maritime Affairs.
22. According to Ms. Njagi, the project of the subject tender is a fish processing plant and that it is a Hazard Analysis Critical Control Point (HACCP) compliant ultra-modern tuna fish hub located at Liwatoni, Mombasa County. HACCP is a management system in which food safety is addressed through the analysis and control of biological, chemical, and physical hazards from raw material production, procurement and handling, to manufacturing, distribution and consumption of the finished product.
23. The project is one of a kind in East and Central Africa and it is to be implemented in two phases. Implementation of Phase 1 involves the design of the entire hub and installation of specified scope and phase 2 involves “work that comprised only design in Phase 1 but not built and installed under Phase 1.” The total cost of the project will be approximately Kshs. 6.2 billion subject to what Ms. Njagi has sworn to be “fluctuations”.
24. Upon completion, the project is expected to create approximately 3000 direct jobs and generate revenue of up to about Kshs.15 billion annually when fully operational. So far, Phase 1 of the project is 45% complete.



25. According to Ms. Njagi, any further delays in the completion of this hub is a lost income opportunity to the Government and a lost employment opportunity to over 3,000 Kenyans who are in dire need of jobs. Besides the creation of jobs, the fishing hub is established to handle both local and foreign fishing-vessels and facilitate the local or export of fish which by extent will generate revenue of up to Kshs. 15 Billion annually.
26. It is further sworn that the Government of Kenya has “pumped” a significant amount of money into the project and that in the interest of article 201 of *the Constitution* of Kenya, 2010 on principles of public finance, public money should be used prudently and responsibly. Thus, any delays in the operationalization of the project, as precipitated by the applicant, is an affront on the prudent use of public funds.
27. As far as the execution of the project is concerned, it has been sworn that the interested party was awarded tender MOALF&C/SDF&BE/012/2021- 2022 for Proposed Hazard Analysis Critical Control Point (HACCP) Compliant Ultra-Modern Tuna Fish Hub at Liwatoni, Mombasa County (PHASE ONE) at a contract sum of Kshs. 1,498,169,658.00 and an agreement signed on 29 March 2022. The contract was for 182 days (26 weeks) with a commencement date of 11 April 2022 and an original completion date of 10 October 2022.
28. The interested party failed to complete work within the 182 days and sought an extension of time on 29 September 2022. The 1<sup>st</sup> respondent awarded the interested party 15 additional weeks but the interested party failed to complete work within the added days.
29. For the third time, the interested party submitted for a request for extension vide a letter dated 11 September 2023. The 1<sup>st</sup> respondent granted the interested party the extension on 13 September 2023 for 18 weeks. Again, the interested party failed to complete its assigned scope and sought more time. When the interested party sought for extension for the fourth time on 11 December 2023, through a letter dated 8 December 2023, the 1<sup>st</sup> respondent declined extension and advised the interested party to fast track and complete works before the lapse of the contract period on 31<sup>st</sup> December 2023. The interested party’s contract eventually lapsed on the material date. In total, the interested party was awarded 64 weeks (1 year and 3 months) out of the anticipated contract period of 26 weeks.
30. Contrary to the petitioner’s allegations, the project has not achieved completion and is not yet ready for operations. The evidence of a complete project is the issuance of a Practical Completion Certificate, Certificate of Occupation and HACCP Compliance certificate. In the instant project, there is no Practical Completion Certificate of Occupation and HACCP Compliance Certificate issued by the 2<sup>nd</sup> respondent or any other entity with the mandate to issue such a certificate. In any event, the petitioner has not submitted any evidence in proof of his allegations that the project is complete and ready for operations.
31. It is further sworn that even if the interested party could have achieved 100% completion of the scope defined in its contract of 29 March 2022, the project could not have achieved 100% completion and be ready for operations for the reason that the scope was defined and the project would still require the installation of equipment on all the facility areas and the construction of Phase two in order to achieve efficient operations. The Fresh and Frozen Fish Processing Plant is only one component of the scope awarded to the interested party.
32. The contract awarded on 14 August 2024 to Encomm limited has a defined scope of what should be implemented by the contractor with a view to achieving completion of the project. The Contract awarded to the interested party on 29 March 2022 was for Proposed Hazard Analysis Critical Control Point (HACCP) Compliant Ultra Modern Tuna Fish Hub at Liwatoni, Mombasa County (Phase



- One)' whereas the contract awarded to the new contractor is for "Proposed Completion of Liwatoni Fresh and Frozen Fish Processing Plant". The two, according to the respondents, are separate and distinct contracts.
33. Contrary to the Petitioner's allegations, the contract awarded on 14 August 2024 is not for the implementation of work already completed by the interested party and it is not a scheme to swindle money from Kenyan Taxpayers. The contract is meant to complete incomplete works left by the interested party and to start and complete a new scope of work in order to complete the entire project and achieve its objective, in the public interest.
  34. The 1<sup>st</sup> respondent has denied advertising for leasing, operations and management of the facility as alleged by the petitioner. The true position is that the 1<sup>st</sup> Respondent advertised for expression of interest (prequalification of firms) that can run manage and operationalize the fresh and frozen plant. This was in anticipation of the completion of the fresh and frozen plant. Moreover, there is a difference between prequalification and invitation of submission of bids.
  35. The respondents have also sworn that the petitioner has failed to disclose that the interested party had filed a suit at Milimani High Court, Commercial Division (H(COMM/168 OF2024) seeking similar orders of injunction as sought by the petitioner herein and an additional order for valuation of the project. This suit was filed when the interested party failed to obtain the injunctive relief from a previously filed suit. In the circumstances, this suit is res judicata.
  36. The respondents have also sworn that any further delays in the completion of the project will be an added cost to the project for the following reasons:
    - i. There is a high likelihood that any delay in commencement and completion of the project by Encomm. Limited will attract costs in the form of idle equipment, idle labour and compensation events on delay in commencement and completion of the project.
    - ii. That the rates in the current bill of quantities are reflective of the current market price rates. Any delay in commencement and completion will lead to fluctuation of the rates considering changes in the price of labour, materials and other costs brought by inflation.
  37. All these costs will be lumped on the project hence depleting the meagre resources available and an added cost to the taxpayers and public at large. This will be an affront to article 201(d) of *the Constitution* of Kenya, 2010 which states that public money shall be used in a prudent and responsible way.
  38. The petitioner, it is urged, has not demonstrated any violation of Constitutional rights. The petitioner's suit is disguised as a constitutional petition when, in real sense, it is a commercial and contractual matter.
  39. Although, a replying affidavit has been filed on behalf of the interested party, it is apparent from the affidavit that the interested party supports the motion and; as a matter of fact, as between the petitioner and the interested party, the latter has provided finer details of the background of the instant petition.
  40. That aside, the replying affidavits filed by the respondents and interested party point to the background of this petition as the existing dispute between the interested party and the respondents over the subject tender and the completion of an earlier tender given to the interested party.
  41. In particular, Peter Ngotho Kilonzo, the managing director of the interested party has sworn that the interested party and the respondents entered into a contract for Proposed Hazard Analysis Critical Control Point (HACCP) Complaint Ultra-Modern Tuna Fish Hub at Liwatoni (Phase One) dated 29 March, 2022 for a contract price of Kshs. 1, 498, 169, 658/- (Kenya Shillings One Billion, Four



Hundred and Ninety-Eight Million, One Hundred and Sixty-Nine Thousand, Six Hundred and Fifty-Eight).

42. The scope of works to be carried out in the contract by the interested party comprised of four components listed as follows:
- “i. The Design of the Entire Hub
  - ii. Construction of 1No.1000MT cold storage facility.
  - iii. The construction of Fresh and Frozen plant
  - iv. The construction of the Tuna Loining and Canning factory”
43. Contrary to the respondent’s allegations, the works of phase 1 of the project under Tender No. MOALF&C/SDFA&BE/012/2021-2022 for proposed Construction of hazard Analysis Critical Control Point (HACCP) Complaint Ultra Modern Tuna Fish Hub at Liwatoni, Mombasa County (Phase One) are at 80% complete. The respondents’ representatives are alleged to have given a confirmation to this effect.
44. The proposed project by the respondents is not for the completion of phase 1 but for completion of what the interested party has described as “component (iii) of phase 1 which has been substantially completed by the interested party.”
45. The interested party has disputed the respondents’ contention that the project is only 45% complete. This allegation, according to the interested party, is only meant to justify the non-payment for the works done by the interested party as there is no basis for the conclusion that the project is only 45 % complete.
46. Kilonzo has sworn further that the project was on “a design build basis” and it was awarded to the interested party at Kshs. 1,498,169,658 which was made up as follows:
- “a. Preliminaries - Kshs 166,149, 584.00
  - b. Designs - Kshs 390,000,000 .00
  - c. Equipment and Machines - Kshs 552, 725,819 .00
  - d. Cost Works - Kshs 389,294,255 .00”
47. As for the remainder of the project, it has been sworn on behalf of the interested party that the equipment or machines have been manufactured and are “held in a warehouse ready for shipment and further that the same were approved following a successful virtual pre-shipment inspection held on 4 October 2023”.
48. Even then, Kilonzo has sworn that during the last site meeting held in December 2023 and after a comprehensive site inspection, the 1<sup>st</sup> and 2<sup>nd</sup> respondents’ resident engineer reported that the percentage of work stood at 70% and an additional consultative meeting held on 8 December 2023 attended by the 1<sup>st</sup> respondent, the technical representatives of the 1<sup>st</sup> and 2<sup>nd</sup> respondents; and, the interested party, it was confirmed that the percentage of works done stood at 70%.
49. According to the interested party, the delays in the completion of the project have been occasioned by the respondents or their agents and people acting under their instructions. In particular, it is alleged that that they have failed to “facilitate” the interested party.



50. It is sworn on behalf of the interested party that “the frustrations occasioned by the respondent include but are not limited to non-payment by the respondents of invoices raised which has culminated in frustrations on vendors approached by the interested party.”
51. The interested party has admitted, however, that it has asked for extension of time to complete the project from time to time, whenever the need for such extension has arisen. For instance, the interested party applied for extensions of time on 14 August 2023 up to 31 January 2024 and was granted extension of time only up to 31 December 2023 and on 8 December 2023 up to 29 February 2024. The 1<sup>st</sup> respondent is said to have declined to give the extension of time as requested by the interested party in the last application prior to the lapse of the contract between the interested party and the respondents.
52. It is also apparent that the dispute between the respondents and the interested party has culminated in a civil suit which, according to Kilonzo’s affidavit, is registered as High Court Commercial Case No. E168 of 2024. Although the status of the court dispute is not clear from the interested party’s affidavit, it has emerged from the respondents’ affidavit that interim reliefs were granted and parties referred to an arbitrator apparently pursuant to an arbitration clause in the contract between them.
53. It turns out that the instant petition is against the background of a dispute between the interested party and the respondent. The facts upon which the petition is based are the same facts which form the basis of the dispute between the respondents, on the one hand, and the interested party, on the other hand. As noted, the petitioner and the respondents are clear that there is or there has been a separate suit filed by the interested party against the respondents. Much of the details of this suit has been given by the respondents in the affidavit of Ms. Njagi but, for the avoidance of doubt that the petitioner is aware of this suit, he has pleaded in paragraph 25 of the petition, thus:
- “25. The above tender was abandoned when it was challenged in court by the interested party, herein but the skewed scheme continued when the 1<sup>st</sup> respondent re-advertised the same “proposed completion of Liwatoni Fresh and Frozen Fish Processing Plant under a different tender no. MMBE &MA/SDEA8/F/3/2023-2024.”
54. No doubt this is the subject tender. It should not, therefore, be in doubt that the outcome of the instant application and ultimately, the petition itself would impact the dispute between the interested party and the respondents, in one way or the other. Going by the orders sought in the application and the petition, the interested party will certainly benefit in its cause against the respondent if the application and the petition are allowed.
55. That said, the petition is pegged on the factual ground that the subject tender is for a project that has been executed and completed by the interested party. As far as I understand the petitioner, a tender to undertake the same project that has otherwise been concluded is a wastage of public funds.
56. But what comes out of the pleadings and affidavits of the interested party and the respondents is that, contrary to the petitioner’s allegations, the project is not yet complete. According to the interested party, the project is 80% complete. The respondents, on the other hand, say that the project is only 45% complete.
57. Considering that the petition is yet to be heard all I would say, and as far as it is necessary for the determination of the instant application, is that, if the parties who are the main players in the subject tender are in agreement that the project is incomplete and the only point of divergence between them is the extent to which the project is complete, it is not open for this Honourable Court to proceed on the assumption that the project is complete and; for that reason, grant conservatory orders or any sort



of injunction against the subject tender or the respondents. It is for this reason that I am not satisfied that the applicant has met the threshold for grant of injunctive relief or conservatory orders.

58. The question of injunctions, stay of execution and conservatory orders in petitions such as the instant one was addressed in *Munya v Kithinji & 2 others (Application 5 of 2014)* [2014] KESC 30 (KLR) (2 April 2014) (Ruling) where the Supreme Court held as follows:

“85. These are issues to be resolved on the basis of recognizable concept. The domain of interlocutory orders is somewhat ruffled, being characterized by injunctions, orders of stay, conservatory orders and yet others. Injunctions, in a proper sense, belong to the sphere of civil claims, and are issued essentially on the basis of convenience as between the parties, and of balances of probabilities. The concept of “stay orders” is more general, and merely denotes that no party nor interested individual or entity is to take action until the Court has given the green light.

86. “Conservatory orders” bear a more decided public-law connotation: for these are orders to facilitate ordered functioning within public agencies, as well as to uphold the adjudicatory authority of the Court, in the public interest. Conservatory orders, therefore, are not, unlike interlocutory injunctions, linked to such private-party issues as “the prospects of irreparable harm” occurring during the pendency of a case; or “high probability of success” in the supplicant’s case for orders of stay. Conservatory orders, consequently, should be granted on the inherent merit of a case, bearing in mind the public interest, the constitutional values, and the proportionate magnitudes, and priority levels attributable to the relevant causes.” (Emphasis added)

59. From the evidence available, the project has stalled yet it is also evident that some substantial public funds have been injected into the project which are going to waste as long as the project is not up and running. To the extent that it necessary for the determination of the instant application, I would say that it is in the public interest to have the project completed the consequence of which it will certainly serve the purpose for which it was intended from the very beginning and, in the process, mitigate further losses to the public associated with the delay in the implementation of the project.

60. This conclusion, in itself, does not in any way suggest that the fate of the petition is sealed. It is still open for the petitioner to prove that the subject tender was unnecessary and if he does so even after the project has been completed, an order surcharging all or any of the respondents for the losses that the public may have incurred will remain on the table, as a viable option open to be adopted by this Honourable Court.

61. For the reasons I have given, I do not find any merit in the the petitioner’s application; it is hereby dismissed and the interim injunctive reliefs and conservatory orders granted on 2 September 2024 are hereby discharged. Costs of the application will abide the outcome of the petition. It is so ordered.

**SIGNED, DATED AND DELIVERED ON 23 MAY 2024**

**Ngaah Jairus**

**JUDGE**

